

JPA File No.: 06-044  
AG Contract No.: KR06-0794TRN  
Project: Reconstruction  
Section: Iron Springs Road  
TRACS No.: HF143 01C  
Budget Source Item No.: HURF

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
YAVAPAI COUNTY

**THIS AGREEMENT** is entered into this date December 5<sup>th</sup>, 2006, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the YAVAPAI COUNTY, acting by and through its CHAIRPERSON and BOARD OF SUPERVISORS the ("County"). The State and the Developer are collectively referred to as "Parties".

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-334 and § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes § 11-251 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.

3. The State has approved the exchange of Highway User Revenue Funds (HURF) pursuant to the amounts and schedule shown in column D of the table below for reconstruction of Iron Springs Road, starting 600' west of Williamson Valley Road at Grandview Drive, and going to the National Forest boundary. This reconstruction involves AC-ARFC for a total of 10 miles, and is collectively hereinafter referred to as the "Project." Such funds shall be repaid to the State by withholding from the Northern Arizona Council of Governments (NACOG) Federal Apportionment and corresponding Obligation Authority as shown in column B and C in the table below. All such transactions are to be made in accordance with the schedule as shown in column A.

**THEREFORE**, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 28582  
Filed with the Secretary of State  
Date Filed: 12/5/06  
Janice K. Brewer  
Secretary of State  
By: [Signature]

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
Federal Fiscal Year to be Processed	STP Apportionment to be Charged to NACOG	STP Obligation Authority to be Charged to NACOG	90 %HURF Funds to be Transferred to County
<b><u>Construction</u></b>			
FFY 2006	\$322,359.00	\$277,778.00	\$250,000.00
<b>Total</b>	<b>\$322,359.00</b>	<b>\$277,778.00</b>	<b>\$250,000.00</b>

## **II. SCOPE OF WORK**

### 1. The County shall:

a. Provide design plans, specifications and other such documents and services required for construction bidding and construction of the Project.

b. Be responsible for any contractor claims required for construction of the Project for extra compensation due to delays or whatever reason attributable to the County.

c. Advertise for bids and award one or more construction contracts for the Project. Administer contracts for the project and make all payments to the contractor(s), complying with all applicable State Laws, Rules and Regulations.

d. Invoice the State for thirty percent (30%) of the cost of construction upon award of the construction project. Total payment by the State to the County shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2006 in which the billing is made.

e. Invoice the State for 30% of the cost of construction when the project reaches the 30% completion stage. Total payments by the State to the County shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2006 in which the billing is made, plus any carryover amounts not previously paid in prior years.

f. Invoice the State for 30% of the cost of construction when the project reaches the 60% completion stage. Total payments by the State to the County shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2006 in which the billing is made, plus any carryover amounts not previously paid in prior years.

g. Upon satisfactory completion of construction, approve and accept the project on behalf of the County, provide for the maintenance, at its own expense. After the Final Closeout Field Review, provide the State with a Final Acceptance letter documenting the notice of the approval and acceptance of the Project.

h. Invoice the State for 10% of the cost of construction when the project has been satisfactorily completed and accepted by the County. Total payments by the State to the County shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2006 in which the billing is made, plus any carryover amounts not previously paid in prior years.

2. The State shall:

a. Charge NACOG STP Apportionment in the amount of \$322,359.00 and NACOG Obligation Authority in the amount of \$277,778.00 for said Project.

b. Within thirty-days (30) after receipt and approval of construction invoices at the thirty and sixty percent construction completion stages, advance the County HURF funds in the amount of 30% at each invoiced stage for construction.

c. Within 30 days after receipt and approval of construction invoices, advance the County HURF Funds or the remaining 10% of \$250,000.00 for the construction of the Project.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon 30 days written notice to the other party. It is understood and agreed that in the event the County cancels this Agreement, the State shall in no way be obligated to maintain said project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The County assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The County shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The County shall also require its contractors to name the State and ADOT as an additional indemnitee in the County's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing Highway User Revenue Funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the County and that to the extent permitted by law the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

Yavapai County  
Attn: Mike Willett  
1100 Commerce Drive  
Prescott, Arizona 86305  
(928) 777-7521  
(928) 771-3167 Fax

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

10. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

**YAVAPAI COUNTY**

By 

THOMAS THURMAN  
Chairman, Board of Supervisors

**STATE OF ARIZONA**

Department of Transportation

By 

DALE BUSKIRK  
Division Director

ATTEST:

By 

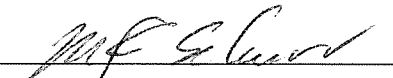
BEV STADDON  
County Clerk

**ATTORNEY APPROVAL FORM FOR THE YAVAPAI COUNTY**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the COUNTY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the COUNTY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 20<sup>th</sup> day of October, 2006.

  
\_\_\_\_\_  
County Attorney

**CERTIFIED COPY OF ENTRY IN OFFICIAL MINUTES  
OF THE YAVAPAI COUNTY BOARD OF SUPERVISORS**

YAVAPAI COUNTY            )  
                                      ) ss.  
ARIZONA                    )

Bev Staddon, having been first duly sworn, deposes and says:

I am the duly appointed, qualified and acting Clerk of the Yavapai County Board of Supervisors and in such capacity under the provisions of ARS §11-241 am charged with the responsibilities, among others, of recording all proceedings of the Board and maintaining custody of such records of the Board as are required by law to be maintained. Among the records of which I have custody is the official minute book of the Board of Supervisors which under the provisions of ARS §11-217 is required to be made and kept.

Set forth below is a copy of an entry in the aforesaid minute book of which, as aforesaid, I am the officer having the legal custody. This is my certificate under the provisions of Rule 44(A), Rules of Civil Procedure, and the Uniform Business Records Act, that the said copy is a true and correct copy thereof, to which I attest by my signature subscribed hereunto:

Date of meeting of which the minutes are a record: November 6, 2006.

The entry in the said minutes:

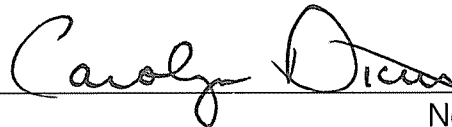
Discussion and possible approval of Intergovernmental Agreement JPA06044 with the State of Arizona for the receipt of \$250,000 of Highway User Revenue Funds for the reconstruction of a portion of Iron Springs Road. Phil Bourdon, Public Works Director. Approved by unanimous vote. Motion by Supervisor Davis, second by Supervisor Springer. No comments from the public.



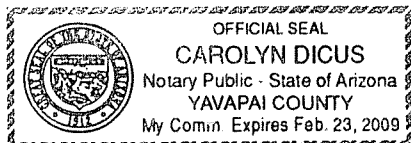
Bev Staddon, Clerk

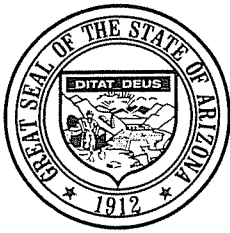
**SUBSCRIBED AND SWORN** to before me November 20, 2006.

My Commission Expires:



Notary Public





**Office of the Attorney General  
State of Arizona**

Terry Goddard  
Attorney General

Civil Division  
Transportation Section

Susan Davis  
Assistant Attorney General

Direct: 602-542-8855  
Fax: 602-542-3646

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR06-0794 TRN (JPA06-044), an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-951 through 11-954, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED: November 29, 2006.

TERRY GODDARD  
Attorney General

A handwritten signature in cursive script, appearing to read "Susan Davis", written over a horizontal line.

SUSAN DAVIS  
Assistant Attorney General  
Transportation Section